Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Emergency Declaratory and Other Relief	)	WC Docket No. 96-45
	)	
	)	

COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

Albert H. Kramer
Robert F. Aldrich
Robert N. Felgar
DICKSTEIN SHAPIRO MORIN & OSHINSKY, LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202)828-2226
Attorneys for the American Public Communications Council

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INTRODUCTION AND SUMMARY

As highlighted by Verizon in its Petition for Emergency Declaratory and Other Relief ("Emergency Petition"), the telecommunications industry is in the midst of a financial crisis. While the American Public Communications Council ("APCC")[1] does not endorse Verizon's Emergency Petition,[2] a number of the actions asked of the Federal Communications Commission ("Commission") by Verizon should be applied, with some modifications, by the Commission to ensure the health of the payphone industry.

Independent payphone service providers ("PSPs") are extremely concerned by the crises facing the long-distance industry and the recent bankruptcies of WorldCom and Global Crossing. Pursuant to the Telecommunications Act of 1996 (the "Act") and the Commission's rules,[3] interexchange carriers ("IXCs") pay independent PSPs well over one hundred million

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1 APCC is the largest association of independent payphone service providers.

2 As an incumbent local exchange carrier ("ILEC"), Verizon controls critical bottleneck facilities and remains the dominant provider of local service in its region. The Commission should therefore be cautious in deciding whether to grant ILECs such as Verizon the requested relief. On the other hand, the payphone industry is extremely competitive with literally thousands of providers, many of them very small. Unlike ILECs, PSPs do not control critical bottleneck facilities on which other providers depend.

3 47 U.S.C. § 276(b)(1)(A) (requires that PSPs be paid for each and every completed call); 47 C.F.R. § 64.1300 (provides that the "first facilities-based interexchange carrier to which a
(footnote continued on next page)

dollars in compensation for dial-around calls[4] every year. Independent PSPs, perhaps as much or more than any other segment of the telecommunications industry, are at risk from the failures of IXCs.

PSPs are already under serious stress as increased wireless calling has dramatically changed the economics and sharply reduced the profitability of payphones. If a significant percentage of dial-around revenue is interrupted, the effect on independent PSPs would be devastating. Unlike Verizon and other Bell Operating Companies, most independent PSPs are very small companies that cannot withstand a significant reduction in revenues for very long, if at all.

The effect of the turmoil in the long-distance industry on independent PSPs is captured by the recent WorldCom and Global Crossing bankruptcies. WorldCom, which is responsible for approximately 36% of all dial-around compensation paid by IXCs,[5] has notified APCC that it will not pay any compensation to independent PSPs for the second quarter of 2002 or the first 22 days of the third quarter of 2002. All told, independent PSPs stand to lose more than $10 million if WorldCom fails to pay during this time period. In addition, Global Crossing has *already failed* to pay independent PSPs dial-around compensation for the fourth quarter of 2001 and the first thirty days of the first quarter of 2002. Global Crossing is responsible for approximately 5% of all dial-around compensation paid by IXCs to independent PSPs.

Global Crossing's failure, and WorldCom's expected failure, to pay dial-around compensation highlights the exposure of PSPs to the crisis in the long distance industry. If the

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completed coinless access code or subscriber toll-free payphone call is delivered by the local exchange carrier shall compensate the payphone service provider for the call. . .").

[4] Such calls include access code and toll free calls.

Commission does not adopt measures that prevent additional non-payment of dial-around compensation to PSPs, numerous PSPs will be forced to remove payphones and/or exit the payphone business.

The Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"), requires that the Commission promote the "widespread deployment of payphone service." 47 U.S.C. § 276(b)(1). In order for the Commission to ensure such deployment it should allow PSPs to adopt some of the same measures proposed by Verizon in its Emergency Petition. In particular, the Commission should permit PSPs to require financially strapped IXCs that are not in bankruptcy to make special payment guarantees; the Commission should support PSPs' efforts in the bankruptcy courts to obtain adequate assurance of payment of dial-around compensation from bankrupt IXCs; and the Commission should support efforts by PSPs in bankruptcy court to ensure that purchasers of bankrupt IXCs' existing customer accounts pay the dial-around compensation owed on those accounts.

DISCUSSION

Section 276 of the Act directs the Commission to "take all actions necessary" to ensure that every PSP is fairly compensated for every completed payphone call. *See* 47 U.S.C. § 276(b)(1)(A). To implement that requirement, the Commission adopted a compensation regime that requires IXCs to pay for the use of payphones whenever those payphones are used to originate a dial-around call carried by the IXC.[6]

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5 This estimate is based on data collected by the APCCS, the largest dial-around compensation clearinghouse for independent PSPs.

6 *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541 (1996).

In keeping with that statutory mandate, the Commission should take a number of steps to ensure that PSPs continue to be compensated for each and every call as required by the Act. Ensuring that PSPs receive payment from IXCs such as WorldCom is particularly important because the dial-around compensation rate does not include an element for bad debt.[7] In other words, since the Commission's prescribed compensation rate did not factor in the likelihood that some IXCs would not pay, the Commission should at the very least provide PSPs with the necessary tools to ensure that they recover as much of the compensation to which they are entitled as possible.

The Commission should take three measures to ensure that PSPs are paid. First, with respect to IXCs that are not in bankruptcy, the Commission should declare that it would be unreasonable under section 201(b) of the Act for an IXC to refuse a request from a PSP to make special payment guarantees such as security deposits and advance payments, if that IXC has poor payment performance or demonstrates objective indicia of credit risk. In the alternative, the Commission should declare that 47 C.F.R. § 64.1300, which requires IXCs to pay dial-around compensation, implicitly requires an IXC to abide by reasonable payment practices which, in cases where an IXC is having financial difficulty, includes the special payment guarantees discussed above.

Second, with respect to IXCs that are in bankruptcy, the Commission should support PSPs' efforts in the bankruptcy courts to obtain adequate assurance of payment of dial-around compensation from bankrupt IXCs. Third, the Commission should also ensure that purchasers of

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[7] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Third Report and Order, and Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd 2545, 2619-20, ¶ 162 (1999).

bankrupt IXCs' existing customer accounts pay the dial-around compensation owed on those accounts. Each of these will be addressed in turn.

I. PSPS SHOULD BE PERMITTED TO INSIST THAT IXCS IN FINANCIAL DIFFICULTY PROVIDE SPECIAL PAYMENT GUARANTEES

The Commission should clarify that a financially troubled IXC's failure to provide reasonable payment guarantees is a violation of section 201(b) of the Act.[8] Section 201(b) of the Act provides that all "practices . . . that [are] unjust or unreasonable [are] hereby declared to be unlawful." 47 U.S.C. § 201(b). Thus, Section 201(b) imposes a very broad requirement on carriers that their practices be "just and reasonable." *In the Matter of Business Discount Plan, Inc.; Apparent Liability for Forfeiture, Order on Reconsideration*, 15 FCC Rcd 24896, 24399, ¶ 8 (2000) ("Congress gave the Commission broad authority over unjust and unreasonable practices . . . . In granting Section 201(b), Congress did not enumerate or otherwise limit the specific practices to which this provision applies. Instead, it granted us a more general authority to address such practices as they might arise in a changing telecommunications marketplace.") IXCs' payment practices with respect to dial-around compensation fall within the ambit of section 201(b).

It is common practice for vendors in unregulated markets to request payment guarantees from customers that have poor payment histories and/or that are in financial trouble.

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8 The criteria used to determine whether an IXC is having financial difficulty and therefore subject to demands for special payment guarantees should be the same as the criteria Verizon advances in its proposed tariffs filed on July 25, 2002. Tariff F.C.C. No.1, § 2.4.1. Thus, for example, PSPs should be able to make special payment demands when an IXC has a proven history of late payments, when it does not have established credit or when the senior debt securities of the IXC are below investment grade. Similarly, the type of payment guarantee and the circumstances under which each type can be demanded by PSPs should be governed by the criteria proposed in Verizon's tariff. Note, however, that APCC takes no position regarding whether the Commission should approve Verizon's proposed tariffs. As discussed above, ILECs (footnote continued on next page)

PSPs should similarly be permitted to request such guarantees. If the Commission does not allow PSPs to demand special payment guarantees in appropriate situations, PSPs would have no way to protect themselves from financially strapped IXCs that are about to default on their compensation obligations.

In the past the Commission has been receptive to attempts to reduce the risk of loss due to financial stress in the long distance industry. In particular, the Commission permitted BellSouth to reduce the notice period for discontinuance in light of the bankruptcy of "some" IXCs. *Annual 1987 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd 280, 290 App. A (1986). Clearly, the risk to PSPs from non-payment of dial-around compensation far exceeds the risk faced by BellSouth. Thus, measures that attempt to reduce PSPs' exposure from loss of dial-around compensation are even more appropriate in this case than they were with respect to BellSouth.

In the event that an IXC refuses to comply with a PSP's request for a payment guarantee, PSPs should be permitted to charge the IXC's customers for dial-around calls. While a Commission ruling that it is unlawful for an IXC to refuse to comply with a reasonable request for a payment guarantee would be helpful, it is not sufficient. PSPs need some means of recovering the cost of dial-around calls in the event that an IXC signals that it has no intention to pay dial-around compensation. Allowing PSPs to charge customers of such IXCs for dial-around calls would provide PSPs with such means.

As an alternative (or in addition) to declaring that it would be unreasonable under section 201(b) of the Act for certain IXCs to refuse to abide by a request from PSPs to make

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and PSPs are clearly differently situated and the Commission should be cautious in deciding whether to grant the requested relief.

special payment guarantees, the Commission should declare that section 64.1300 of the Commission's rules requires that IXCs abide by such requests. Section 64.1300 provides that "the first facilities-based interexchange carrier to which a completed coinless access code call is delivered by the local exchange carrier shall compensate the payphone service provider for the call . . ." 47 C.F.R. § 64.1300(a). Implicit in the rule's requirement that IXCs pay compensation to PSPs is a requirement that IXCs adopt reasonable payment practices. Clearly, for example, if an IXC adopted a policy of paying PSPs dial-around compensation five years after the calls were placed, the IXC would be violating section 64.1300 the Commission's rules. Similarly, an IXC's refusal to comply with PSPs' reasonable request for a payment guarantee is a violation of Section 64.1300 of the Commission's rules.

II. THE COMMISSION SHOULD SUPPORT PSPS' EFFORTS IN BANKRUPTCY COURTS TO ENSURE CONTINUED PAYMENT OF DIAL-AROUND COMPENSATION BY IXCS.

The Commission should support, in any bankruptcy court proceeding in which it participates, the right of PSPs to receive payment in advance and other guarantees such as security deposits that ensure payment of dial-around compensation.[9] As discussed above, dial-around compensation is critical to independent PSPs' continued viability. Thus, in order to ensure the widespread deployment of payphones as required by Congress the Commission should take all reasonable measures to ensure that PSPs are fully compensated for all dial-around calls. Moreover, Commission support for payment guarantees from bankrupt IXCs is consistent with 11 U.S.C. § 366(b) of the bankruptcy code which provides that a supplier may discontinue

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[9] The type of payment guarantee and the circumstances under which each type of payment guarantee can be demanded by PSPs should be governed by the same criteria stated in Verizon's proposed F.C.C. Tariff No. 1, § 2.4.1, as filed on July 25, 2002. As discussed above, however, APCC takes no position regarding whether the Commission should approve Verizon's proposed tariff.

service if neither the trustee or debtor "furnishes adequate assurance of payment, in the form of a deposit or other security for services . . ."

III. THE COMMISSION SHOULD CLARIFY THAT PURCHASERS OF BANKRUPT IXCS' CUSTOMER ACCOUNTS MUST PAY DIAL-AROUND COMPENSATION ASSOCIATED WITH THOSE ACCOUNTS

IXCs that purchase customer accounts of bankrupt IXCs should not be permitted to avoid dial-around compensation obligations simply because the IXC from which they purchased the account is bankrupt. The Commission should rule that if, for example, WorldCom assigns customer accounts, the IXC that purchases the accounts must pay all dial-around compensation owed on the accounts. A failure of the purchasing IXC to pay dial-around compensation owed on the accounts would be inconsistent with 47 U.S.C. § 276(b)(1)(A), which requires that PSPs be compensated for each and every completed call. It would also violate the Commission's rules, which require that IXCs compensate PSPs for dial-around calls. Because the payment of compensation is an unavoidable legal requirement, purchasing IXCs cannot refuse to assume compensation obligations.

In addition, the Communications Act and the Commission policies prohibit PSPs from blocking dial-around calls.[10] Since PSPs cannot refuse to serve IXCs, IXCs that have purchased customer accounts from bankrupt carriers should not be permitted to refuse to assume the dial-around compensation obligations associated with the acquired accounts.

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[10] 47 U.S.C. § 226(c); *In the Matter of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; RBOC/GTE/SNET Payphone Coalition Petition for Clarification*, Second Order on Reconsideration, 16 FCC Rcd 8098, 8100, n. 6 (2001). In section I above, APCC requests that the Commission allow independent PSPs to (footnote continued on next page)

CONCLUSION

The payphone industry is experiencing severe economic difficulties which have been further aggravated by bankrupt carriers failing to pay dial-around compensation. Continued interruptions in dial-around compensation at this time would be devastating. Accordingly, the Commission should take the steps recommended herein to ensure that the problems in the long-distance industry do not further infect and compromise the health of the payphone industry.

Respectfully Submitted,

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Albert H. Kramer

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require customers of IXCs that are experiencing financial difficulties to deposit coins in order to make a dial-around call.

Robert F. Aldrich
Robert N. Felgar
Dickstein Shapiro Morin &
Oshinsky, LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2225
Attorneys for the American Public
Communications Council